IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.405 OF 2004

Shri Vijay Tanaji Shinde ...Petitioner.

V/s

Shri Shrikant Garud & Ors. ...Respondents.

Mr. N.J. Patil, Advocate for the applicant.

Mr. R.S. Kate, Advocate for respondent No.1

Mr. A.S. Shitole for the State.

CORAM: V.M.KANADE,J.
DATE: 14th February, 2005

P.C.

1. Heard the learned Counsel appearing for the petitioner and the learned Counsel for the respondent No.1 and the learned APP for the State.

2. The petitioner takes objection to the order passed by the Judicial Magistrate, First Class, Karad in Regular Criminal Case No.40 of 1999. A criminal complaint was filed against the respondent No.1 and others under sections 218, 219, 419, 166, 167, 192, 193, 114 read with section 34 of the Indian Penal Code. It is submitted on behalf of the petitioner that A.D. Sawant was appointed as Court Commissioner by virtue of the order passed by the Civil Court in Civil Suit which was filed by the petitioner. The

contention of the petitioner is that the Court Commissioner had measured the land and had prepared a map without taking into consideration the original map in order to favour the original accused Nos. 3 to 5. The respondent No.1 was admittedly working in the office of TILR as "Nimtandar". It is alleged that the respondent No.1 had certified the map without verifying the original map. Initially, process was issued against respondent No.1 and others. Thereafter, the application was preferred by respondent No.1 for recalling the process on the ground that respondent No.1 being a public servant, no prosecution could be launched against him without obtaining the sanction from the Government. While issuing the process against respondent No.1 earlier, Trial Court has taken into consideration the judgment in the case of Mary Kutty Thomas Vs. Pawar, D.C. Zone-IV reported in 1983 CRI.L.J.1654. It is submitted that the Trial Court, thereafter, erred in recalling its earlier order of issuing process. It is submitted that the action of respondent No.1 was illegal inasmuch as he had prepared the map without verifying the original map and had given a certificate that the said map is true and correct as per the record. It is, therefore, submitted that this was not the official duty of the respondent No.1 and,

therefore, sanction to prosecute him was not necessary.

3. In my view, the submission made by the learned Counsel appearing for the petitioner cannot be accepted. Respondent No.1 was working in the Office of TILR and it was his official duty to prepare the maps on behalf of the Department in which he was working. The allegation of the petitioner is that he had prepared the incorrect map. Considering the said allegation, in my view, sanction to prosecute the respondent No.1 ought to have been obtained before proceeding against him. There is no reason to interfere with the order passed by the Judicial Magistrate, First Class. Criminal Revision Application is accordingly rejected. Needless to mention that the petitioner is at liberty to proceed against the respondent No.1 if the sanction is granted by the competent authority.

V.M. KANADE, J.